

STATUS OF PENDING EN BANC CASES

Today's Date: May 24, 2010

This report is provided for case identification and background information only and does not reflect the views of the court. When a case is heard or reheard en banc, the en banc court assumes jurisdiction over the entire case, see 28 U.S.C. § 46(c), regardless of the issue or issues that may have caused any member of the Court to vote to hear the case en banc. Summerlin v. Stewart, 309 F.3d 1193 (9th Cir. 2002)

Farrakhan v. Gregoire, 06-35669

Three-Judge Panel Opinion: 590 F.3d 959 (9th Cir. 2010)

Order Taking Case En Banc: 2010 WL 1766232 (9th Cir. April 28, 2010)

Date of Order Taking Case En Banc: April 28, 2010

Status: To be calendared the week of September 20, 2010, San Francisco, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal of district court's summary judgment entered against convicted felons in lawsuit challenging Washington's felon disenfranchisement laws under the Voting Rights Act (VRA).

Holding: Not yet decided

Norse v. City of Santa Cruz, 07-15814

Three-Judge Panel Opinion: 586 F.3d 697 (9th Cir. 2010)

Order Taking Case En Banc: 598 F.3d 1061 (9th Cir. 2010)

Date of Order Taking Case En Banc: March 12, 2010

Status: Calendared June 22, 2010, 10:00 a.m., at Pasadena, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal in 42 U.S.C. § 1983 action alleging violation of First Amendment rights.

Holding: Not yet decided

Guggenheim v. City of Goleta, 06-56306

Three-Judge Panel Opinion: 582 F.3d 996 (9th Cir. 2009)

Order Taking Case En Banc: 598 F.3d 1061 (9th Cir. 2010)

Date of Order Taking Case En Banc: March 12, 2010

Status: Calendared June 22, 2010, 2:00 p.m., at Pasadena, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal by mobile home park owners challenging City's mobile home rent control ordinance.

Holding: Not yet decided

United States v. Lopez-Velasquez, 07-30241

Three-Judge Panel Opinion: 568 F.3d 1139 (9th Cir. 2009)

Order Taking Case En Banc: 599 F.3d 925 (9th Cir. 2010)

Date of Order Taking Case En Banc: March 8, 2010

Status: Calendared June 23, 2010, 2:00 p.m., at Pasadena, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal by United States of district court's dismissal of criminal

indictment for illegal reentry following removal.

Holding: Not yet decided

United States v. Aguila Montes De Oca, 05-50170

Three-Judge Panel Opinion: 553 F.3d 1229 (9th Cir. 2009)

Order Taking Case En Banc: 594 F.3d 1080 (9th Cir. February 3, 2010)

Date of Order Taking Case En Banc: February 3, 2010

Status: Argued and submitted March 25, 2010

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Barry G. Silverman, William A. Fletcher, Ronald M. Gould, Marsha S. Berzon, Johnnie B. Rawlinson, Jay S. Bybee, Consuelo M. Callahan, Milan D. Smith, Jr., N. Randy Smith

Subject Matter: Appeal of criminal conviction for attempting to reenter the United States following deportation.

Holding: Not yet decided

Chapman v. Pier 1 Imports, 07-16326

Three-Judge Panel Opinion: 571 F.3d 853 (9th Cir. 2009)

Order Taking Case En Banc: 593 F.3d 974 (9th Cir. 2010)

Date of Order Taking Case En Banc: January 26, 2010

Status: Argued and submitted March 23, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Andrew J. Kleinfeld, Barry G. Silverman, Kim McLane Wardlaw, Richard A. Paez, Marsha S. Berzon, Johnnie B. Rawlinson, Richard R. Clifton, Milan D. Smith, Jr. and N. Randy Smith

Subject Matter: Appeal of summary judgment in action brought against a retail store pursuant to the Americans with Disabilities Act.

Holding: Not yet decided

United States v. Begay, 07-10487

Three-Judge Panel Opinion: 567 F.3d 540 (9th Cir. 2009)

Order Taking Case En Banc: 591 F.3d 1180 (9th Cir. 2010)

Date of Order Taking Case En Banc: January 4, 2010

Status: Argued and submitted March 23, 2010.

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Sidney R. Thomas, Barry G. Silverman, M. Margaret McKeown, Kim McLane Wardlaw, Raymond C. Fisher, Marsha S. Berzon, Richard R. Clifton, Consuelo M. Callahan, Sandra S. Ikuta

Subject Matter: Appeal of criminal conviction for first-degree murder and using a firearm during a crime of violence.

Holding: Not yet decided

Cassirer v. Thyssen-Bornemisza, 06-56325

Three-Judge Panel Opinion: 580 F.3d 1048 (9th Cir. 2009)

Order Taking Case En Banc: 590 F.3d 981 (9th Cir. 2009)

Date of Order Taking Case En Banc: December 30, 2009

Status: Argued and submitted March 24, 2010

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Andrew J. Kleinfeld, Sidney R. Thomas, Barry G. Silverman, William A. Fletcher, Ronald M. Gould, Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea, N. Randy Smith

Subject Matter: Appeal of district court's denial of motions to dismiss action seeking to recover from a Spanish museum a painting allegedly taken in 1939 in violation of international law by an agent of the government of Nazi Germany.

Holding: Not yet decided

Catholic League v. San Francisco, 06-17328

Three-Judge Panel Opinion: 567 F.3d 595 (9th Cir. 2009)

Order Taking Case En Banc: 586 F.3d 1166 (9th Cir. 2009)

Date of Order Taking Case En Banc: November 5, 2009

Status: Argued and submitted December 16, 2009

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Andrew J. Kleinfeld, Michael Daly Hawkins, Sidney R. Thomas, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Richard R. Clifton, Jay S. Bybee, Sandra S. Ikuta

Subject Matter: Appeal of district court's dismissal of 42 U.S.C. § 1983 Establishment Clause action against City for resolution opposing Vatican directive that Catholic archdiocese stop placing children for adoption in homosexual households.

Holding: Not yet decided

Mohamed v. Jeppesen Dataplan, Inc., 08-15693

Three-Judge Panel Opinion: 563 F.3d 992 (9th Cir. 2009)

Order Taking Case En Banc: 586 F.3d 1108 (9th Cir. 2009)

Date of Order Taking Case En Banc: October 27, 2009

Status: Argued and submitted December 15, 2009

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, William C. Canby, Michael Daly Hawkins, Sidney R. Thomas, Raymond C. Fisher, Richard A. Paez, Richard C. Tallman, Johnnie B. Rawlinson, Consuelo M. Callahan, Carlos T. Bea

Subject Matter: Appeal of district court's dismissal of Alien Tort Statute action by foreign nationals allegedly transferred in secret to foreign countries for detention and interrogation pursuant to the extraordinary rendition program operated by the Central Intelligence Agency.

Holding: Not yet decided

Ojo v. Farmers Group, Inc., 06-55522

Three-Judge Panel Opinion: 565 F.3d 1175 (9th Cir. 2009)

Order Taking Case En Banc: 586 F.3d 1108 (9th Cir. 2009)

Date of Order Taking Case En Banc: October 26, 2009

En Banc Order: 2010 WL 1407846 / 1407850 (9th Cir. April 9, 2010)

Date of En Banc Order: April 9, 2010

Status: Certified to the Supreme Court of Texas the question whether Texas law permits an insurance company to price insurance by using credit-score factors that have a racially disparate impact that, were it not for the McCarran-Ferguson Act, would violate the FHA. Stayed further proceedings pending resolution of the certified question.

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Michael Daly Hawkins, Susan P. Graber, M. Margaret McKeown, William A. Fletcher, Ronald M. Gould, Richard R. Clifton, Milan D. Smith, Jr., Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal of district court's dismissal of class action claiming disparate impact race discrimination by insurer in violation of federal Fair Housing Act in homeowners' property and casualty policies.

Holding: The FHA prohibits discrimination in the denial and pricing of homeowner's insurance. The reverse-preemption standard set forth in the McCarran-Ferguson Act applies to claims brought under latter-enacted civil rights statutes such as the FHA.

Byrd v. Maricopa County Sheriff's Dept., 07-16640

Three-Judge Panel Opinion: 565 F.3d 1205 (9th Cir. 2009)

Order Taking Case En Banc: 583 F.3d 673 (9th Cir. October 6, 2009)

Date of Order Taking Case En Banc: October 6, 2009

Status: Argued and submitted December 15, 2009

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Susan P. Graber, Sidney R. Thomas, Raymond C. Fisher, Ronald M. Gould, Richard A. Paez, Richard C. Tallman, Johnnie B. Rawlinson, Carlos T. Bea, N. Randy Smith

Subject Matter: Appeal of district court's judgment in action by male pretrial detainee alleging unconstitutional search by female cadet.

Holding: Not yet decided

Millender v. County of Los Angeles, 07-55518

Three-Judge Panel Opinion: 564 F.3d 1143 (9th Cir. 2009)

Order Taking Case En Banc: 583 F.3d 669 (9th Cir. 2009)

Date of Order Taking Case En Banc: October 2, 2009

Status: Argued and submitted December 14, 2009

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Barry G. Silverman, Susan P. Graber, Raymond C. Fisher, Richard C. Tallman, Johnnie B. Rawlinson, Jay S. Bybee, Consuelo M. Callahan, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Appeal of district court's judgment in 42 U.S.C. § 1983 action alleging unconstitutional search and seizure.

Holding: Not yet decided

United States v. Fox, 08-30445

Three-Judge Panel Opinion: Not applicable

Order Taking Case En Banc: 583 F.3d 596 (9th Cir. 2009)

Date of Order Taking Case En Banc: September 16, 2009

Status: Oral argument in this case was vacated and proceedings were stayed pending the Supreme Court's decision in *Dillon v. United States*, No. 09-6338. Case came on for submission on 12/14/09, submission deferred.

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, M. Margaret McKeown, Kim McLane Wardlaw, William A. Fletcher, Raymond C. Fisher, Marsha S. Berzon, Jay S. Bybee, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta

Subject Matter: Appeal of district court's resentence imposed below the amended Sentencing Guidelines range, based on provisions governing crack cocaine offenses.

Holding: Not yet decided

Nordyke v. King, 07-15763

Three-Judge Panel Opinion: 563 F.3d 439 (9th Cir. 2009)

Order Taking Case En Banc: 575 F.3d 890 (9th Cir. 2009)

Date of Order Taking Case En Banc: July 29, 2009

Status: Argued and submitted September 24, 2009. Submission vacated 9/24/09 pending the Supreme Court's disposition of *Maloney v. Rice*, No. 08-1592, *McDonald v. City of Chicago*, No. 08-1521, and *National Rifle Ass'n of Am., Inc. v. City of Chicago*, No. 08-1497.

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, Pamela Ann Rymer, Michael Daly Hawkins, Susan P. Graber, Ronald M. Gould, Richard C. Tallman, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Appeal of summary judgment in 42 U.S.C. § 1983 action brought by gun show promoters challenging the constitutionality of county ordinance prohibiting possession of firearms on county property.

Holding: Not yet decided

United States v. Strickland, 08-30091

Three-Judge Panel Opinion: 556 F.3d 1069 (9th Cir. 2009)

Order Taking Case En Banc: 569 F.3d 956 (9th Cir. 2009)

Date of Order Taking Case En Banc: June 19, 2009

En Banc Order: 601 F.3d 963 (9th Cir. 2010)

Date of En Banc Order: April 19, 2010

Status: Affirmed district court's decision finding prior conviction a predicate offense relating to sexual abuse of a minor. Mandate issued May 11, 2010.

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, Pamela Ann Rymer, Sidney R. Thomas, Barry G. Silverman, Marsha S. Berzon, Jay S. Bybee, Consuelo M. Callahan, Sandra S. Ikuta

Subject Matter: Appeal of criminal conviction for the offense of receipt and possession of child pornography.

Holding: The district court properly considered the Maryland court's docket sheet, which meets the criteria set forth in *United States v. Snellenberger*, 548 F.3d 699 (9th Cir. 2008) (en banc), and even without certification the docket sheet was of sufficient reliability under *Shepard v. United States*, 544 U.S. 13 (2005), and *Snellenberger*.

Doody v. Schriro, 06-17161

Three-Judge Panel Opinion: 548 F.3d 847 (9th Cir. 2008)

Order Taking Case En Banc: 566 F.3d 839 (9th Cir. 2009)

Date of Order Taking Case En Banc: May 12, 2009

En Banc Order: 596 F.3d 620 (9th Cir. 2010)

Date of En Banc Order: February 25, 2010

Status: Reversed district court's denial of habeas corpus petition challenging a conviction based on nine murders.

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Betty Fletcher, Harry Pregerson, Stephen R. Reinhardt, Pamela Ann Rymer, Andrew J. Kleinfeld, Sidney R. Thomas, Kim M. Wardlaw, Richard C. Tallman, Johnnie B. Rawlinson

Subject Matter: Appeal of the district court's denial of petitioner's 28 U.S.C. § 2254 habeas corpus petition challenging his convictions for murder, armed robbery, burglary,

and conspiracy.

Holding: The Arizona Court of Appeals unreasonably concluded that *Miranda* advisements made to defendant were clear and understandable. The state court made an unreasonable determination that defendant voluntarily confessed, and unreasonably applied clearly established federal law in failing to consider the totality of the circumstances to determine whether defendant's will was overborne by the interrogation. The coerced confession was inadmissible and the error was not harmless.

Pinholster v. Ayers, 03-99003 / 03-99008

Three-Judge Panel Opinion: 525 F.3d 742 (9th Cir. 2008)

Order Taking Case En Banc: 560 F.3d 964 (9th Cir. 2009)

Date of Order Taking Case En Banc: March 20, 2009

En Banc Order: 590 F.3d 651 (9th Cir. 2009)

Date of En Banc Order: December 9, 2009

Status: Affirmed the district court's partial grant of 28 U.S.C. § 2254 habeas corpus petition challenging murder conviction and capital sentence.

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Stephen R. Reinhardt, Pamela Ann Rymer, Andrew J. Kleinfeld, Kim M. Wardlaw, William A. Fletcher, Richard A. Paez, Marsha S. Berzon, Jay S. Bybee, Milan D. Smith, Jr

Subject Matter: Appeal following district court's partial grant and partial denial of habeas corpus petition. District court granted relief as to death sentence for conviction on capital murder charge, but otherwise denied petition.

Holding: The en banc court affirmed the district court's denial of petitioner's request for an evidentiary hearing and denial of habeas relief as to his claim of ineffective assistance of counsel at the guilt phase, based on lack of prejudice. The en banc court affirmed the district court's conclusion that the California Supreme Court was objectively unreasonable in summarily denying petitioner's claim of ineffective assistance at sentencing, based on counsel's prejudicial failure to investigate, discover and introduce readily available mitigation evidence.

Dukes v. Wal-Mart, Inc., 04-16688 / 04-16720

Three-Judge Panel Opinion: 509 F.3d 1168 (9th Cir. 2007)

Order Taking Case En Banc: 556 F.3d 919 (9th Cir. 2009)

Date of Order Taking Case En Banc: February 13, 2009

Status: Affirmed in part the district court's class-certification order in a Title VII sex discrimination action against Wal-Mart.

En Banc Order: 2010 WL 1644259 (9th Cir. April 26, 2010)

Date of En Banc Order: April 26, 2010

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Pamela Ann Rymer, Michael Daly Hawkins, Barry G. Silverman, Susan P. Graber, Raymond C. Fisher, Richard A. Paez, Marsha S. Berzon, Carlos T. Bea, Sandra S. Ikuta

Subject Matter: Appeal of the district court's orders on motion for certification of plaintiff class in employee Title VII action.

Holding: Affirmed district court's certification of a class of current employees with respect to their claims for injunctive relief, declaratory relief, and back pay. Remanded

with respect to punitive damages and as to the claims of putative class members who no longer worked for Wal-Mart when the complaint was filed.

Richter v. Hickman, 06-15614

Three-Judge Panel Opinion: 521 F.3d 1222 (9th Cir. 2008)

Order Taking Case En Banc: 548 F.3d 1236 (9th Cir. 2008)

Date of Order Taking Case En Banc: November 10, 2008

En Banc Order: 578 F.3d 944 (9th Cir. 2009)

Date of En Banc Order: August 10, 2009

Status: Reversed district court's denial of habeas corpus petition.

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, Andrew J. Kleinfeld, Barry G. Silverman, Kim M. Wardlaw, Raymond C. Fisher, Richard A. Paez, Jay S. Bybee, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Appeal of the district court's denial of petitioners' 28 U.S.C. § 2254 habeas corpus petitions challenging jury convictions for murder, attempted murder, robbery and burglary.

Holding: Trial counsel rendered ineffective assistance by failing to investigate and present expert testimony on evidence that would have supported appellant's self-defense claim.

United States v. Hinkson, 05-30303

Three-Judge Panel Opinion: 526 F.3d 1262 (9th Cir. 2008)

Order Taking Case En Banc: 547 F.3d 993 (9th Cir. 2008)

Date of Order Taking Case En Banc: October 20, 2008

Status: Affirmed district court's denial of a new trial motion and evidentiary rulings.

En Banc Order: 585 F.3d 1247 (9th Cir. 2009)

Date of En Banc Order: November 5, 2009

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Diarmuid F. O'Scannlain, Andrew J. Kleinfeld, Kim M. Wardlaw, William A. Fletcher, Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal of criminal conviction for soliciting the murder of federal officials.

Holding: The en banc court re-stated the "abuse of discretion" standard of review of a trial court's factual findings as an objective two-part test, requiring the court of appeals first to consider whether the district court identified the correct legal standard and then to determine whether the district court's findings of fact and application of the findings to the correct legal standard were illogical, implausible, or without support.

Murdoch v. Castro, 05-55665

Three-Judge Panel Opinion: 489 F.3d 1063 (9th Cir. 2007)

Order Taking Case En Banc: 546 F.3d 1051 (9th Cir. 2008)

Date of Order Taking Case En Banc: October 9, 2008

Status: Argued and submitted March 24, 2009

Members of En Banc Court: Alex Kozinski, Andrew J. Kleinfeld, A. Wallace Tashima, Sidney R. Thomas, Barry G. Silverman, M. Margaret McKeown, Kim M. Wardlaw, William A. Fletcher, Consuelo M. Callahan, Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal of the district court's denial of petitioner's 28 U.S.C. § 2254 habeas corpus petition challenging his jury conviction for murder, following remand by this court.

Holding: Not yet decided

United States v. Comprehensive Drug Testing, Inc., 05-10067 +

Three-Judge Panel Opinion: 513 F.3d 1085 (9th Cir. 2008)

Order Taking Case En Banc: 545 F.3d 1106 (9th Cir. September 30, 2008)

Date of Order Taking Case En Banc: September 30, 2008

Status: 05-55354: dismissed as untimely government's appeal. 05-15006: affirmed district court's Order pursuant to Fed. R. Crim. P. 41(g). 05-10067: affirmed district court's quashal pursuant to Fed. R. Crim. P. 17(c).

En Banc Order: 579 F.3d 989 (9th Cir. 2009)

Date of En Banc Order: August 26 2009

Members of En Banc Court: Alex Kozinski, Andrew J. Kleinfeld, Susan P. Graber, Kim M. Wardlaw, William A. Fletcher, Richard A. Paez, Marsha S. Berzon, Consuelo M. Callahan, Carlos T. Bea, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Consolidated appeals from orders issued by district judges in cases arising from the federal investigation into illegal steroid use by professional baseball athletes.

Holding: The en banc court dismissed as untimely the government's appeal in 05-55354. In 05-15006, the en banc court upheld the district court's findings that the government disregarded the players' constitutional rights and unreasonably refused to follow proper procedures. The en banc court in 05-10067 affirmed the district court's quashal pursuant to Fed. R. Crim. P. 17(c) of the government's final subpoena.

Hayward v. Marshall, 06-55392

Three-Judge Panel Opinion: 512 F.3d 536 (9th Cir. 2008)

Order Taking Case En Banc: 527 F.3d 797 (9th Cir. 2008)

Date of Order Taking Case En Banc: May 16, 2008

Status: Affirmed the district court's denial of a 28 U.S.C. § 2254 habeas corpus petition challenging a decision by the Governor of California reversing a parole grant by the Board of Parole Hearings.

En Banc Order: 2010 WL 1664977 (9th Cir. April 22, 2010)

Date of En Banc Order: April 22, 2010

Members of En Banc Court: Alex Kozinski, Diarmuid F. O'Scannlain, Andrew J. Kleinfeld, Sidney R. Thomas, Barry G. Silverman, Raymond C. Fisher, Richard A. Paez, Marsha S. Berzon, Richard C. Tallman, Richard R. Clifton, N. Randy Smith

Subject Matter: Appeal of the district court's denial of a habeas corpus petition challenging the Governor of California's reversal of the California Board of Prison Terms' decision to grant parole.

Holding: Overruled several Ninth Circuit cases, and portions of others, regarding a prisoner's obligation to obtain a certificate of appealability (COA) from administrative decisions such as denial of parole and prison transfer. A COA is required to confer jurisdiction on this court in an appeal from a district court's denial of a § 2254 petition. In the absence of state law establishing otherwise, there is no federal constitutional

requirement that parole be granted in the absence of "some evidence" of future dangerousness or anything else.

Abebe v. Mukasey, 05-76201

Three-Judge Panel Opinion: 493 F.3d 1092 (9th Cir. 2007)

Order Taking Case En Banc: 514 F.3d 909 (9th Cir. 2008)

Date of Order Taking Case En Banc: January 25, 2008

Status: Denied in part and dismissed in part a petition for review of the Board of Immigration Appeals' decision denying Immigration and Naturalization Act § 212(c) relief.

En Banc Order: 548 F.3d 787 (9th Cir. 2008); corrected en banc order: 554 F.3d 1203 (9th Cir. 2009)

Date of En Banc Order: November 20, 2008; January 5, 2009

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Andrew J. Kleinfeld, Sidney R. Thomas, Barry G. Silverman, Ronald M. Gould, Richard C. Tallman, Richard R. Clifton, Consuelo M. Callahan, Carlos T. Bea, N. Randy Smith

Subject Matter: Petition for review of the Board of Immigration Appeals' decision finding petitioner ineligible to apply for discretionary relief under former Immigration and Naturalization Act § 212(c), under *Matter of Blake*, 23 I. & N. Dec. 722 (BIA 2005), and 8 C.F.R. § 1212.3(f)(5).

Holding: Immigration and Nationality Act § 212(c) only gives the Attorney General discretion to grant lawful permanent residents relief from inadmissibility, not deportation. The holding in *Tapia-Acuna v. INS*, 640 F.2d 223 (9th Cir. 1981) that there is no rational basis for providing § 212(c) relief from inadmissibility but not deportation is overruled.

Sarei v. Rio Tinto, PLC, 02-56256 / 02-56390

Three-Judge Panel Opinion: 487 F.3d 1193 (9th Cir. 2007)

Order Taking Case En Banc: 499 F.3d 923 (9th Cir. 2007)

Date of Order Taking Case En Banc: August 20, 2007

En Banc Order: 550 F.3d 822 (9th Cir. 2008)

Date of En Banc Order: December 16, 2008

Status: Remand for consideration, in the first instance, of whether exhaustion of local remedies was required, in dismissal of Alien Tort Statute ("ATS") action. On 9/29/09 the en banc court granted defendants' motion to reactivate the appeals and ordered supplemental briefing. Oral argument to be scheduled by separate order.

Members of En Banc Court: Mary M. Schroeder, Harry Pregerson, Stephen R. Reinhardt, Andrew J. Kleinfeld, Barry G. Silverman, M.M. McKeown, Marsha S. Berzon, Johnnie B. Rawlinson, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta

Subject Matter: Appeal of the district court's dismissal of a class action complaint brought by current and former residents of the island of Bougainville in Papua New Guinea against a mining company under the Alien Tort Claims Act.

Holding: Certain ATS claims are appropriately considered for exhaustion under both domestic prudential standards and core principles of international law. Defendant bears the burden to plead and justify an exhaustion requirement, including the availability of local remedies.

